

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2878 of 1998

with

SPECIAL CIVIL APPLICATION No 1621 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHIKHAJI SENDHAJI ROZATAR

Versus

GSRTC

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Appearance:

1. Special Civil Application No. 2878 of 1998  
MR HK RATHOD for Petitioner  
MR YS LAKHANI for Respondent No. 1
2. Special Civil Application No 1621 of 1997  
MR HK RATHOD for Petitioner  
MR YS LAKHANI for Respondent No. 1

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 02/07/98

ORAL JUDGEMENT

#. In SCA No.2878 of 1998 Rule. Shri Yogesh Lakhani, Learned Advocate for the petitioner waives service of rule for respondents. These two petitions are filed by the employer and employee. SCA No.1621 of 1997 is filed by the employer - Gujarat State Road State Transport Corporation to set aside and quash the award passed by the Industrial Tribunal of Ahmedabad in Reference No.177 of 1991 whereas the SCA 2878/98 is filed Bhikhaji Sendhaji Rozatar, the employee to implement the award passed in Reference No.177/91. As these two petitions are pertaining to one and the same award, they are heard together and they are being disposed of by this common judgment.

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The workman Bhikhaji was working as conductor. On 23rd February,1988, he was conductor on Palanpur Radhanpur route. When his bus was checked by the checking squad at Malgat, they found that there were about 87 passengers in the said bus and out of the 87 passengers, 12 passengers were not issued tickets though the conductor had received the fare from them. Thereafter, the workman conductor was served with chargesheet and departmental inquiry was held against him. In the said departmental inquiry, it was found that the charge levelled against him proved and therefore he was dismissed from service by order dated 25th August,1989. The conductor raised an industrial dispute on account of the said order of dismissal passed against him and consequently Reference No : 177/91 was made to the industrial tribunal of Ahmedabad.

#. Before the industrial tribunal, the workman didn't dispute the legality and validity of the departmental inquiry. The main contention raised on behalf of the workman was that the punishment awarded was disproportionate to the misconduct proved against him. It is an admitted fact that the bus was very overcrowded and out of 87 passengers, 75 passengers were issued tickets and when the bus was checked, the delinquent workman conductor was in the process of issuing tickets. The department had held him guilty on the basis of rule that the conductor was to allow the bus to ply only after full booking of the passengers and that was not done by him and thereby he had committed the misconduct. The industrial tribunal has taken into consideration the said finding in the departmental inquiry and then came to the conclusion that in view of the said finding recorded by the inquiry officer, the punishment of dismissal from service, was disproportionate to the misconduct proved against him. Therefore the industrial tribunal

interfered with the awarding of the punishment. It set aside the order of dismissal and directed the reinstatement of the workman without any backwages by its order dated 23th September,1996.

#. The employer Gujarat State Road Transport Corporation having felt aggrieved has come before this court. The learned advocate for the Corporation has vehemently urged before me that the misconduct committed by the workman was grave as there was case of misappropriation of public money and the conductor was also having previous bad history therefore in the circumstances, the order of dismissal from service is proper and appropriate punishment and there was no reason for instustrial tribunal to interfere with the same. It is true that the present respondents the workman had not issued tickets to 12 passengers when his bus was very much overcrowded. There were 87 passengers actually in the bus at the time of checking and at the time of checking, the conductor was in process of issuing tickets. In view of these circumstances, the corporation had put reliance mainly on its rule that the conductor ought not to have allowed the bus to ply without completing the booking. This view is taken by the Corporation of relying on the said rule. The Corporation was not of positive opinion or view that there was misappropriation committed by conductor on account of his failure to issue the ticket. What was taken and treated by the Corporation was his commision of misconduct by not following the rule of Corporation. Therefore in these circumstances, the punishment of dismissal from the services seems to be harsher and disproportionate. In the above circumstances, it could not be said that the interference with the punishment in question made by the industrial tribunal is a perverse act. Therefore in the circumstances, by exercising power under Article 226 & 227 of the Constitution of India, I am unable to hold that there is justification for interfering with the discretionary power exercised by the industrial tribunal in the matter of punishment. I am unable to hold the contention of the learned advocate for the corporation that the industrial tribunal ought to have to maintained the order of dismissal.

#. The learned advocate for the Corporation further urged before me that there was no material on record to hold that the conductor was not in employment. He urged before me that the workman had not produced any material to show that he was not engaged. From the judgment delivered by the industrial tribunal, it is quite obvious that the workman had made statement that he was out of

job. When the workman makes statement that he was out of job during the interim period, burden shifts on employer to prove that he was actually in employment. In the instant case, it is not possible to hold that it was even urged before the industrial tribunal by the corporation that the conductor was in employment. Therefore in the circumstances, the normal rule of reinstatement with backwages would come into play but the industrial tribunal has taken into consideration the fact that the misconduct of the workman has been proved and therefore he must be awarded some punishment. The industrial tribunal had awarded punishment by denying backwages to him from the date of dismissal till the date of award. The dismissal order has taken place on 22nd August, 1989 the award is passed on 23rd September, 1996, thus there is denial of wages for nearly 7 years.

#. Nodoubt, the material produced by the corporation does show that the delinquent conductor had also previously committed similar misconduct on three occasions. Therefore taking into consideration the same and the submissions made by the learned advocate for the Corporation that the delinquent conductor deserves some more punishment, I hold that the delinquent conductor should be punished further by denying him the backwages from the date of award till the date of reinstatement which should take place him within 1 month from today but in case, if the Corporation fails to reinstate him within one month then he would be entitled to all the backwages from the date of award. Thus, I partly allow SCA 1621/97 as indicated above and make the rule absolute accordingly.

#. The SCA No.2878/98 is filed by the delinquent conductor for implementation of the award, I have already directed that the respondent in SCA No : 2878/98 Gujarat State Road Transport Corporation should reinstate the conductor within 1 month from today with the continuity of service and in case if the corporation fails to reinstate him within one month from today, he will be entitled to backwages from the date of award till the date of reinstatement. Thus, rule issued in SCA 2878/98 is made absolute in the above terms. In the circumstances of the case, I direct both the parties in both petitions to bear their respective costs.

Date : 2-7-1998 (S.D.Pandit,J.)

(KPP)